

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Federal-State Board on
Universal Service

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CC Docket No. 96-45

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Comments on the Rural Task
Force Recommendation
FCC-00J-3

COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. ("Charter"), by its attorneys, hereby submits its comments in response to the Federal Communications Commission ("Commission") *Public Notice*¹ requesting comment on the Rural Task Force *Recommendation* to the Federal-State Board on Universal Service in the above-referenced proceeding.²

Charter recognizes the importance of linking rural areas to the benefits of the information economy and understands the origins of longstanding policies of funding universal service subsidies for rural incumbent local exchange carriers ("ILECs"). Plainly, the efforts of the Rural Task Force to reach a consensus plan for rural subsidy reform have been significant. The Joint Board, however, should exercise extreme caution and should not endorse any aspect of the Task Force's proposals that might discourage new facilities-based carriers from seeking to serve rural markets or that might unnecessarily expand universal service funding. Of particular concern to Charter is the recommendation that federal subsidies be expanded to encourage rural ILECs to deploy broadband networks.

¹ Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force *Recommendation, Public Notice*, CC Docket No. 96-45, FCC-00J-3 (rel. October 4, 2000) ("*Public Notice*").

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I. INTRODUCTION

Charter is the fourth largest operator of cable television systems in the United States, serving over 6.3 million customers. Charter currently provides cable service in 40 states. Its operations in several markets encompass communities served by rural ILECs. Charter's broadband cable television plant, once upgraded, has the potential to support services beyond the delivery of traditional cable services, including the offering of digital cable television services, interactive video programming, and high-speed Internet services to customers in all of Charter's cable markets.

Another very significant service that Charter has under consideration is the offering of telecommunications service using cable television infrastructure. Charter currently is in technical trials for the delivery of packet switched, Internet Protocol-based ("IP") telecommunications to its cable customers in several communities in Wisconsin. Through its telecommunications carrier affiliate, Charter FiberLink of Wisconsin, L.L.C., Charter has competitive local exchange carrier ("CLEC") authority for non-rural areas in Wisconsin and is seeking to serve a rural ILEC territory in Wisconsin.³ The incumbent rural carrier, Wood County Telephone Company, is relatively small, with fewer than 50,000 customer access lines.

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² Federal-State Joint Board on Universal Service, Rural Task Force *Recommendation* to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. September 29, 2000) ("*Recommendation*").

³ See Application of Charter Fiberlink for Authority to Further Extend Service Territory for Local Exchange Services, 3355-NC-103; Application for Interconnection Between Wood County Telephone Company and Charter Fiberlink, LLC 05-TI-322.

It operates only in Wisconsin. Because of its small number of access lines, Wood County currently receives over \$700,000 annually from the federal universal service funds.⁴

Charter anticipates that its trial of IP telecommunications in Wisconsin will be successful and that Charter will provide competitive alternatives to ILECs in many of its cable markets throughout the United States, including in rural markets. Charter's interest in the Rural Task Force *Recommendation* stems from its subsidiary's status as a telecommunications carrier that, once offering commercial service to end users, will be paying to support the federal universal service fund, thus supporting the costs of the plant used to provide core telecommunications services provided by rural ILECs such as Wood County to its customers. Any program of rural subsidy reform that could significantly inflate the support already provided to rural ILECs and discourage the entry of competitive facilities-based service alternatives, such as Charter, is reason for concern.

II. THE TASK FORCE FAILED TO CONSIDER MORE ECONOMICALLY EFFICIENT WAYS TO TARGET NECESSARY RURAL SUBSIDIES

The Commission already has modified its subsidy program for non-rural ILECs by comparing their plant costs to a predictive cost model, *i.e.*, the "Synthesis Cost Model." This forward-looking cost model identifies access lines associated with high cost exchanges in states whose average per line costs exceed national averages. Non-rural carriers in these high cost states have federal per line support targeted to these exchanges. This targeting of per line

⁴ See Universal Service Administrative Company, Report on Fund Size Projections and Contribution Base for Fourth Quarter 2000, filed August 2, 2000 at Appendix #HC5 page 35 of 36.

support effectively limits the amount of federal USF funding and also prevents new carriers from setting up operations that serve relatively lower cost lines but avoid the highest cost lines.⁵

After concluding that rural ILEC plant costs varied tremendously, the Task Force decided that the Synthesis Cost Model would be an unsuitable tool for the targeting of rural ILEC subsidies.⁶ Instead, the Task Force advocated the use of a “Modified Embedded Cost Mechanism” as the baseline to determine the scope of rural subsidy needs. Subsidy support would be based on each ILEC’s embedded costs, *i.e.*, the investments and expenses unique to each rural ILEC.⁷ Under the *Recommendation*, these costs would be recalculated annually once a competitive carrier has received state certification as an Eligible Telecommunications Carrier (“ETC”) and is providing supported services in a rural ILEC’s territory.

The *Recommendation* notes that this per-line support is portable – that is, an ETC would receive the same targeted per-line support as the ILEC for each line it captures from the incumbent. Unlike non-rural per line support that is also portable to an ETC, however, this rural

⁵ The Commission has preserved other, more traditional forms of universal service support for both rural and non-rural ILECs, including switching and corporate expense support with caps on growth of support. The Commission also adopted an interim “hold harmless” payment that guarantees no loss of subsidies to non-rural ILECs for at least three years from the implementation of the FCC’s Synthesis Cost Model. The Commission deferred applying the Synthesis Cost Model to rural carriers, pending review of the Rural Task Force *Recommendation*.

⁶ *Recommendation* at 20. The Task Force rejects the Synthesis Cost Model as well as application of the policy mandates used for non-rural support calculation method. The *Recommendation* estimates that application of the Synthesis Cost Model would reduce available support from the current \$1.553 billion to \$451 million. According to the Task Force, a primary reason for that reduction was the FCC’s decision to rely on a nationwide benchmark and statewide cost-averaging to determine what would be a “sufficient” level of federal funding for non-Rural ILECs.

⁷ The Task Force believes that the costs generated by the Synthesis Model, when viewed on an individual rural wire center or individual rural carrier basis, vary widely from any reasonable estimate of forward looking costs.

per line support would change based on annual changes in the ILEC's embedded costs. Because this approach bases subsidies on embedded costs, it could mean that, as lower cost competitors succeeded in obtaining ILEC customers, the subsidies paid to the ILECs would increase.

It is well accepted that the bedrock goal of the universal service program is to ensure that people stay connected and have access to vital telecommunications services. The *Recommendation* attempts to achieve this goal by expanding subsidies that will predominantly, if not exclusively, be paid to incumbent ILECs. There is no argument, however, that from the perspective of economic efficiency, targeting support directly to consumers who would otherwise disconnect in the absence of a subsidy is far preferable to basing subsidies on a particular rural ILEC's claimed costs of providing service. Under this latter approach, much of the subsidy is directed to consumers with high incomes who would remain connected even if ILEC service prices were to reflect embedded ILEC costs. This makes the subsidy funding larger than necessary and "requires higher tax rates, which distort market outcomes."⁸

Furthermore, because all consumers, including those benefiting from the explicit subsidy ultimately must pay for the subsidy, this broadbrush subsidy approach "may actually decrease penetration levels because the cost of using the network increases for those not receiving a subsidy."⁹ Direct targeting of subsidies to those consumers that need them is a superior means of achieving the goals of rural universal service. Yet the feasibility of direct targeting was not a topic considered by the Task Force.

⁸ Gregory L. Rosston and Bradley S. Wimmer, *Winners and Losers from the Universal Service Subsidy Battle*, at 4, December, 1999 ("Rosston Paper").

⁹ *Id.*

Beyond perpetuating a subsidy structure that is a holdover from the era of telephone monopolies, the Task Force also recommends the Joint Board and the Commission enact upward modifications to the caps and limitations on rural funding for High Cost Loops (“HCL”). Specifically, the Task Force suggests that subsidy support should be re-calculated for 2001 using higher numbers and in future years, by increasing it by \$118.5 million (increased by a “Rural Growth Factor”).¹⁰ Second, the Task Force recommends creating a “safety net,” to be applied in those years when the new cap on the HCL fund limits a rural ILEC’s ability to make major investments in new plant.¹¹ Third, the Task Force recommends modifying the corporate operations expense limitation to continue USF support for rural company corporate operations and expenses growth. Finally, the Task Force seeks modification of the FCC’s policy capping universal service support in cases of rural ILEC mergers or acquisitions to allow for a “safety valve” that would “spark new investments in infrastructure and improved service following a transaction.”¹²

All of these recommendations are likely to inflate federal rural ILEC subsidies, perhaps significantly. Also troublesome from Charter’s perspective is that these proposed reforms could well serve to further insulate rural ILECs from facilities-based competition by distorting the market signals that might otherwise provide interested competitors with information about the demand for telecommunications services in rural areas.

¹⁰ *Recommendation* at 4.

¹¹ The safety net “additive” will be calculated for each rural ILEC service area where the growth in telecommunications plant per line is 14 percent greater than the prior year. *Id.* at 27. Any ILEC qualifying for this safety net would receive it for at least four years, regardless of whether there is sufficient new investment to trigger the safety net each year.

¹² *Id.* at 27-29.

III. THE COMMISSION SHOULD NOT CREATE NEW SUBSIDIES FOR RURAL ILEC PROVISION OF ADVANCED SERVICES

Another dimension of the *Recommendation* is its attempted expansion of subsidy funding for rural ILECs to encourage their deployment of “advanced” telecommunications plant. To achieve this, the Task Force suggests that the list of the seven core USF supported services be expanded to include access to information services at rates reasonably comparable to those in urban areas.¹³ The Task Force concludes that network infrastructure that provides access to advanced services also will provide access to information services.¹⁴

Putting aside for a moment the policy reasons why such an expansion of universal service subsidies is unwarranted, the recommendation to subsidize advanced services networks is procedurally defective.¹⁵ The Commission has an established a periodic process for review of its list of core supported services and that is the appropriate place to propose any expansion of the list.¹⁶

While the costs of providing the seven core telecommunications services in some rural areas may be substantial, a reformed, explicit subsidy support flow to rural ILECs should be sufficient to enable them to continue to provide these services to their customers. They also may

¹³ The definition of supportable services includes: (1) voice grade access to the public switched network, with the ability to place and receive calls; (2) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (3) single-party service; access to emergency services, including in some instances, access to 911 and enhanced 911 (E911) services; (4) access to operator services; (5) access to interexchange services; (6) access to directory assistance; and (7) toll limitation services for qualifying low-income consumers. *See* Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, ¶ 22 (1997).

¹⁴ *Recommendation* at 22-23.

¹⁵ *See, e.g.,* Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision, *Public Notice*, CC Docket 96-45, DA 96-1891 (rel. November 18, 1996).

get additional revenue from network investments when their customers purchase vertical calling features such as call waiting and voice mail services. Certainly no showing is made by the Rural Task Force that additional subsidies are necessary to induce rural ILECs to make broadband network investments in their service areas.¹⁷ While rural areas may be a bit slower than urban areas to get advanced services alternatives, it is far too early in the game to discount competition as a spur to a decision by rural ILECs to build competitive high speed networks. Certainly consumer interest in cable modem services acted as a spur to other ILECs to deploy xDSL as a competitive service offering.

Even assuming that creating new subsidies to encourage rural ILEC deployment of broadband networks was a good idea, Section 254(k) prohibits the FCC from using USF funds to subsidize deployment of ILEC competitive services.¹⁸ In fact, Section 254(k) seeks to ensure that subsidies are targeted only to those portions of ILEC networks that actually provide core telecommunications services. The statute explicitly requires that regulators perform cost allocations and oversee ILEC accounting for network joint and common costs to guard against

¹⁷ As recently as Tuesday of this week, the FCC released summary statistics on the nationwide deployment of high speed networks for Internet access. The FCC noted that the number of high speed service subscribers is growing rapidly and that high speed service is available in all fifty states and in Puerto Rico. High speed distribution facilities were reported in 70% of all of the nation's zip codes, as compared to 59% only six months earlier. Perhaps even more revealing is that there is high speed Internet access now available in 40% of the nation's zip codes with the lowest population density, a 69% increase in only six months. FCC News Release, Federal Communications Commission Releases Data on High-Speed Services for Internet Access, released October 31, 2000.

¹⁸ Section 254(k) provides that "A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47 U.S.C. § 254(k).

cross-subsidy. There is no doubt that advanced services are competitive services, even in rural markets.

There is no exception in the law to allow cross-subsidies from non-competitive services to competitive services in rural markets. This is entirely consistent with the notion that universal service support should only be extended where services are not being delivered on a competitive basis and where the appropriate process has been followed to expand the list of supported services.

IV. FEDERAL SUBSIDIES SHOULD NOT BE USED TO GUARANTEE A RURAL ILEC'S FINANCIAL SUCCESS

Like any other new CLEC competitor, Charter will have to assess each business case prior to investing in new networks and in the development of new services. Charter will have to make these judgments knowing that it will be competing against the incumbent service provider and that its investment and its commercial success are not guaranteed. If Charter misjudges current consumer demand or fails to reasonably predict demand for new services, then Charter suffers the consequences in the market.

The notion that rural ILEC competitors, and the public at large, should be forced to subsidize a rural ILEC's decision to invest in advanced services networks is a perversion of the USF concept. From Charter's perspective, the worst thing the Joint Board and FCC could do would be to endorse any notion that any service provider is entitled to a subsidy for deploying competitive services or a guarantee of a return on their investments in infrastructure deployed in the post-Telecommunications Act environment.

V. CONCLUSION

The *Recommendation* as currently framed effectively picks winners and losers in rural markets. Rural ILECs will have nearly exclusive access to the federal subsidies and in fact will

control the amount of per-line support theoretically available to their competitors as the support is directly tied to the investment decisions a rural ILEC makes regarding its network. The theoretical portability of this funding is no panacea for the lack of competitive neutrality that otherwise permeates the *Recommendation*.

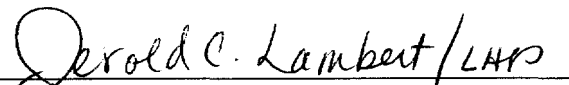
The Task Force's recommendation to expand subsidies also is flawed, particularly the proposal that subsidies should fund rural ILECs' deployment of competitive service networks. It fails to consider more efficient ways to target necessary rural subsidies that would better promote neutrality in rural consumer's choices of service providers. Fundamentally, the reform of rural universal service should be about reform, not about tweaking a subsidy structure that is outmoded and antithetical to competition.

Respectfully submitted,

CHARTER COMMUNICATIONS, INC.

Of Counsel:

Laura H. Phillips
Laura S. Roecklein
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
202-776-2000


Jerold C. Lambert
12444 Powerscourt Drive
Suite 100
St. Louis, Missouri 63131-3660
314-543-2560
Its Attorneys

November 3, 2000

CERTIFICATE OF SERVICE

I, Cynthia Shaw, a secretary for Dow, Lohnes & Albertson, PLLC, do hereby certify that a copy of the foregoing "**COMMENTS OF CHARTER COMMUNICATIONS, INC.,**" was sent first class mail or hand delivery where indicated this 3rd day of November, 2000, to the following:

*The Honorable Susan Ness
Commissioner, FCC Joint Board Chair
Federal Communications Commission
445 12th Street, SW, Rm 8-B115H
Washington, D.C. 20554

*The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, SW, Rm 8-A302
Washington, D.C. 20554

*The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, SW, Rm 8-C302
Washington, D.C. 20554

*Sheryl Todd
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Rm 5-B5`40
Washington, D.C. 20554

*International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037

The Honorable Laska Schoenfelder
Commissioner, State Joint Board Chair
South Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

The Honorable Martha Hogerty
Public Counsel
Missouri Office of Public Counsel
301 West High Street
Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

The Honorable Bob Rowe
Commissioner
Montana Public Service Commission
1701 prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

The Honorable Patrick H. Wood, III
Chairman
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

The Honorable Nanette G. Thompson
Chair
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Rowland Curry
Chief Engineer
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78701-3326

Greg Fogleman
Economic Analyst
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Bldg.
Tallahassee, FL 32399-0850

Mary E. Newmeyer
Federal Affairs Advisor
Alabama Public Service Commission
100 N. Union Street, Ste. 800
Montgomery, AL 36104

Joel Shifman
Senior Advisor
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Peter Bluhm
Director of Policy Research
Vermont Public Service Board
Drawer 20
112 State St., 4th Floor
Montpieller, VT 05620-2701

Charlie Bolle
Policy Advisor
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701-3105

Carl Johnson
Telecom Policy Analyst
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Lori Kenyon
Common Carrier Specialist
Regulatory Commission of Alaska
1016 West 6th Ave., Suite 400
Anchorage, AK 99501

Susan Stevens Miller
Assistant General Counsel
Maryland Public Service Commission
16th Floor, 6 Paul Street
Baltimore, MD 21202-6806

Tom Wilson
Economist
Washington Utilities & Transportation
Commission
1300 Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

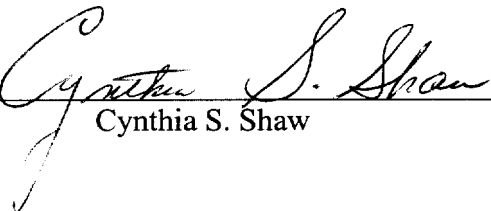
Philip McClelland
Senior Assistant Consumer Advocate
PA Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Barbara Meisenheimer
Consumer Advocate
Missouri Office of Public Counsel
301 West High Street, Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

Earl Poucher
Legislative Analyst
Office of the Public Counsel
111 West Madison, Rm. 812
Tallahassee, FL 32399-1400

Ann Dean
Assistant Director
Maryland Public Service Commission
16th Floor, 6 Paul Street
Baltimore, MD 21202-6806

David Dowds
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oaks Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850



Cynthia S. Shaw

*Via Hand Delivery